IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2967 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT ELECTRICITY BOARD - Petitioner(s)

Versus

SMT. MANUBEN JAYANTIBHAI NAIKA & 19 - Respondent(s)

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Appearance :

MR RC JANI for Petitioner(s) : 1,
MRS SANGEETA N PAHWA for Respondent(s)

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 20/09/2005

ORAL JUDGMENT

In the present petition, the petitioner has challenged the legality of the award dated 15th April 2002 passed by the Industrial Tribunal, Surat. In the

impugned award, the Industrial Tribunal was pleased to come to the conclusion that the statutory staff canteen run at the Thermal Power Station at Ukai is an establishment of the petitioner Gujarat Electricity Board and the workmen engaged therein are the employees of the petitioner-Board. Consequently, the Industrial Tribunal was pleased to allow the reference and direct regularization of such employees from the date of the reference.

2. The Industrial Tribunal considered the material on record and discussed various aspects of the matter to come to the above conclusion. Primarily on the basis of the oral evidence of the contractor concerned who was examined by the petitioner and considering the material to suggest that some of the workers were engaged by the previous contractor and though the contractor had changed, the workers were not changed, the Industrial Tribunal was of the opinion that the canteen is an establishment of the petitioner. The Tribunal was influenced by the fact that it was a statutory canteen and the petitioner was under an obligation to provide for a canteen for its staff.

3. The petitioner has placed on record the agreements entered into between the petitioner and the contractor who was running the canteen in the name and style of Jai Jalaram Farsan Mart. These agreements, in which detailed terms and conditions have been specified, are dated 14th June 2002 and 18th October 1999.

4. On the basis of the terms and conditions contained in these agreements, learned advocate Shri Jani made detailed submissions and pointed out that the employees were to be employed by the contractor and the terms and conditions of their engagement was within the exclusive power of the contractor. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Hari Shankar Sarma v. M/s. Artificial Limbs Manufacturing Corporation, 2002 Lab.I.C. 131 to contend that the Industrial Tribunal committed error in allowing the reference.

5. On the other hand, learned advocate Mrs.Pahwa appearing for the respondents sought to support the award. On the basis of the oral and documentary evidence led before the Industrial Tribunal and also on the basis of the terms and conditions contained in the above

mentioned agreements, she pointed out that the canteen was a statutory canteen, that the petitioner enjoyed full control over the staff running the canteen, including the items to be provided and the rate to be charged for the same from the customers and that the premise, furniture and fixtures were supplied by the petitioner. She also pointed out that the workers were continued though there was change of contractor. On the basis of these factors and other relevant terms and conditions, she contended that the Industrial Tribunal was justified in allowing the reference. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of National Thermal Power Corporation Ltd v. Karri Pothuraju, (2003) 7 SCC 384. She also contended that even as per the decision of the Hon'ble Supreme Court in the case of Haldia Refinary Canteen Employees Union v. Indian Oil Corporation Ltd., (2005) 3 SCC 51, in the present case, all necessary conditions as laid down by the Hon'ble Supreme Court in the above mentioned decision are fulfilled. She therefore submitted that the award is required to be upheld.

6. Whether the canteen run by the petitioner is an extension of the establishment and therefore the workers

employed are to be treated as the employees of the petitioner or not would depend on several circumstances. In the present case, both sides have sought to place heavy reliance on the terms and conditions emerging from the contracts entered into between the petitioner and the contractor mentioned hereinabove. As noted earlier, rival parties sought to draw inference from such terms and conditions to further their arguments. Unfortunately, I find that neither of these agreements were placed before the Industrial Tribunal. They, therefore, do not form part of the record of the reference. In a writ petition wherein this Court is examining the legality of the award passed by the Industrial Tribunal, it would not be possible for me to appreciate the arguments advanced by both the sides which are based mainly on the terms and conditions contained in such agreements without these documents having been placed on record. Having heard the learned advocates at some length, I find it absolutely essential that these documents be brought on record through proper evidence. These documents would throw light on the controversy to be decided. In absence of these documents, it would not be possible for this Court to come to a just conclusion. It would also be not proper for this Court to uphold or

criticize the view of the Industrial Tribunal on the basis of the material which was not part of the record. In fitness of things and in the interest of justice, I find it appropriate and necessary to remand the proceedings to the Industrial Tribunal for fresh consideration after permitting the parties to produce the above mentioned documents and such additional material as may be desired on record. For the above purpose, the impugned award is set aside. The proceedings are remanded to the Industrial Tribunal for fresh consideration keeping in mind the above observations. Considering that the reference is an old one, the Industrial Tribunal may attempt to decide the same as expeditiously as possible. With these directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

R & P be returned to the Industrial Tribunal concerned.

(Akil Kureshi, J.)

(vjn)